

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1074

Citations Affected: IC 6-1.1-6.8; IC 14-21-1; IC 35-43-1-2.1.

Synopsis: Cemeteries. Provides that property that is classified by the director of the division of historic preservation and archeology as cemetery land shall be assessed for property tax purposes at \$1 per acre, unless the cemetery is less than one acre in which case is shall be assessed in the amount of \$1. Establishes procedures and conditions to have property classified as cemetery land. Requires the owner of the classified cemetery land to allow family members and descendants of persons buried in the cemetery to have at least one day each year to visit the cemetery. Allows the division to record cemeteries and burial grounds in each county. Provides that property development near a cemetery or burial ground must follow certain procedures. (Current law requires the cemetery or burial ground be recorded.) Adds burial grounds to the property protected under the cemetery mischief law. (This conference committee report replaces the current contents of the bill with the matters described above, which were contained in HB 1758 as passed by the House.)

Effective: July 1, 2001.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1074 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-1.1-6.8 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2001]:
- 5 **Chapter 6.8. Assessment of Cemetery Land**
- 6 **Sec. 1. As used in this chapter, "director" refers to the director**
- 7 **of the division of historic preservation and archeology of the**
- 8 **department of natural resources.**
- 9 **Sec. 2. For the purpose of property taxation, land on which a**
- 10 **cemetery or burial ground (as defined by IC 14-21-1-3) is located**
- 11 **may be classified and assessed under this chapter if the land**
- 12 **satisfies the conditions prescribed in this chapter for classification**
- 13 **as cemetery land.**
- 14 **Sec. 3. Land may be classified as cemetery land if it is included**
- 15 **in the registry of Indiana cemeteries and burial grounds**
- 16 **established under IC 14-21-1-13.5.**
- 17 **Sec. 4. A parcel of land may not be classified as cemetery land if**
- 18 **a dwelling or other building is situated on the parcel.**
- 19 **Sec. 5. A parcel of land may not be classified as cemetery land if**

1 it is grazed by a domestic animal.

2 Sec. 6. (a) A person who wishes to have a parcel of land classified
3 as cemetery land must have it surveyed by a registered land
4 surveyor. The surveyor shall make the survey by metes and bounds
5 and locate the parcel with reference to some established corner. In
6 addition, the surveyor shall identify the parcel by section,
7 township, range, and county references. The surveyor shall
8 prepare plats of the parcel in ink, and shall prepare the plats on the
9 scale, and in the number, prescribed by the director.

10 (b) The registered land surveyor may use an aerial photograph
11 in order to obtain a description of the parcel. However, the
12 surveyor's description must be accurate and it must meet the
13 requirements specified in subsection (a). If an aerial photograph is
14 used, that fact shall be noted on the application referred to in
15 section 8 of this chapter.

16 Sec. 7. (a) A person who wishes to have a parcel of land classified
17 as cemetery land must have the land assessed by the county
18 assessor of the county in which the land is located.

19 (b) The county assessor shall assess the land at its fair market
20 value, including any mineral, stone, oil, or gas value it has.

21 (c) If the assessment made by the county assessor is not
22 satisfactory to the owner, the owner may appeal the assessment to
23 a board consisting of the assessor, auditor, and treasurer of the
24 county in which the land proposed for classification is located. The
25 decision of the board is final.

26 Sec. 8. (a) A person who wishes to have a parcel of land classified
27 as cemetery land must file an application in duplicate with the
28 director on the forms prescribed by the director. The application
29 must include the following items:

30 (1) The plats referred to in section 6 of this chapter.

31 (2) The assessment required under section 7 of this chapter
32 entered in ink by the county assessor.

33 (3) The signature of the owner, the registered land surveyor,
34 and the county assessor.

35 (b) If an error or omission affecting the eligibility of the
36 application is discovered by the director or county assessor, the
37 director or county assessor shall promptly notify the applicant of
38 the deficiency and allow the applicant to amend the application.

39 Sec. 9. If in the opinion of the director an application filed under
40 section 8 of this chapter and the land to be classified comply with
41 this chapter, the director shall approve the application. In addition,
42 the director shall notify the auditor and the recorder of the county
43 in which the land is located that the application has been approved,
44 and shall return one (1) approved application form to the
45 applicant.

46 Sec. 10. If an application filed under section 8 of this chapter is
47 approved, the applicant shall record the approved application in
48 the applicant's name. If the applicant is a partnership, corporation,
49 limited liability company, or association, the applicant shall record
50 the approved application in the name of the partnership,
51 corporation, limited liability company, or association. When an

1 approved application is properly recorded, the county auditor shall
 2 enter the land for taxation at an assessed value determined under
 3 section 11 of this chapter.

4 Sec. 11. (a) Except as provided in subsection (b), land that is
 5 classified under this chapter as cemetery land shall be assessed at
 6 one dollar (\$1) per acre for general property taxation purposes.

7 (b) A cemetery that is less than one (1) acre shall be assessed in
 8 the amount of one dollar (\$1).

9 Sec. 12. If any oil, gas, stone, coal, or other mineral is obtained
 10 from land that is classified as cemetery land, the parcel shall
 11 immediately be assessed for the oil, gas, stone, coal, or other
 12 mineral wealth. The assessed value of the mineral wealth shall then
 13 be placed on the tax duplicate.

14 Sec. 13. A conveyance of land that is classified as cemetery land
 15 does not release any person acquiring an interest in the land from
 16 any obligation or liability imposed under this chapter.

17 Sec. 14. The expense of the survey required by section 6 of this
 18 chapter shall be paid by the applicant. The expense of an
 19 assessment that is required under this chapter shall be paid from
 20 the county general fund of the county in which the parcel is
 21 located.

22 Sec. 15. The owner of land that is classified under this chapter as
 23 cemetery land must allow family members and descendants of
 24 persons buried in the cemetery to have at least one (1) day each
 25 year to gain access to and visit the cemetery. The date of the visit
 26 to the cemetery must be agreed upon between the owner and the
 27 family members and descendants of persons buried in the
 28 cemetery.

29 SECTION 2. IC 14-21-1-13.5, AS ADDED BY P.L.46-2000,
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2001]: Sec. 13.5. (a) The division may conduct a program to
 32 survey and register in a registry of Indiana cemeteries and burial
 33 grounds that the division establishes and maintains all cemeteries and
 34 burial grounds in each county in Indiana. The division may conduct the
 35 program alone or by entering into an agreement with one (1) or more
 36 of the following entities:

- 37 (1) The Indiana Historical Society established under IC 23-6-3.
- 38 (2) A historical society as defined in IC 20-5-17.5-1(a).
- 39 (3) The Historic Landmarks Foundation of Indiana.
- 40 (4) A professional archeologist or historian associated with a
- 41 college or university.
- 42 (5) A township trustee.
- 43 (6) Any other entity that the division selects.

44 (b) In conducting a program under subsection (a), the division may
 45 receive gifts and grants under terms, obligations, and liabilities that the
 46 director considers appropriate. The director shall use a gift or grant
 47 received under this subsection:

- 48 (1) to carry out subsection (a); and
- 49 (2) according to the terms of the gift or grant.

50 (c) At the request of the director, the auditor of state shall establish
 51 a trust fund for purposes of holding money received under subsection

(b).

(d) The director shall administer a trust fund established by subsection (c). The expenses of administering the trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the trust fund established by subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the trust fund at the end of a state fiscal year does not revert to the state general fund.

(g) Nothing in this section may be construed to authorize violation of the confidentiality of information requirements of 16 U.S.C. 470(w) and 16 U.S.C. 470(h)(h).

(h) The division may record in each county recorder's office the location of each cemetery and burial ground located in that county.

SECTION 3. IC 14-21-1-26.5, AS ADDED BY P.L.46-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A corporation organized under IC 8-1-13.

(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(4) A surface coal mining and reclamation operation permitted under IC 14-34.

Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of a ~~recorded~~ burial ground or cemetery for the purpose of erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

(1) must be approved if a person intends to construct a new structure or alter or repair an existing structure that would significantly impact the burial ground or cemetery; and

(2) is not required if a person intends to erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a ~~recorded~~ burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on

whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(d) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 4. IC 35-43-1-2.1, AS ADDED BY P.L.100-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.1. (a) This section does not apply to the following:

(1) A person who acts in a proper and acceptable manner as authorized by IC 14-21 other than a person who disturbs the earth for an agricultural purpose under the exemption to IC 14-21 that is provided in IC 14-21-1-24.

(2) A person who acts in a proper and acceptable manner as authorized by IC 23-14.

(b) A person who recklessly, knowingly, or intentionally:

(1) damages a cemetery, **a burial ground (as defined in IC 14-21-1-3)**, or a facility used for memorializing the dead;

(2) damages the grounds owned or rented by a cemetery or facility used for memorializing the dead; or

(3) disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure; commits cemetery mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

(Reference is to EHB 1074 as printed March 21, 2001.)

Conference Committee Report
on
Engrossed House Bill 1074

Signed by:

Representative Lytle
Chairperson

Senator Wheeler

Representative Pond

Senator Lewis

House Conferees

Senate Conferees